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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,746	04/20/2004	Jerome J. Kochanski	KOCH-10131	5477

23123 7590 11/19/2007
SCHMEISER OLSEN & WATTS
18 E UNIVERSITY DRIVE
SUITE # 101
MESA, AZ 85201

EXAMINER

MARSH, STEVEN M

ART UNIT	PAPER NUMBER
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3632

MAIL DATE	DELIVERY MODE
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11/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/828,746	Applicant(s) KOCHANISKI, JEROME J.	
	Examiner Steven M. Marsh	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4202004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the second office action for U.S. Application 11/828,746 for a Hold Down Device filed on April 20, 2007.

Election/Restrictions

Applicant's election without traverse of Species I in the reply filed on August 27, 2007 is acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. patent 6,068,163 to Kihm. Kihm discloses a device that can function as a hold down device and hold down a flexible discharge hose. There is a container (2) with a top portion, a bottom portion, a front end and a rear end, and a handle (26) for carrying the hold down device. There is a hose recess (30) comprising a right wall, a left wall, and an upper wall (the hose has an opening surrounded by a circular opening, the circle having upper, lower, left, and right quadrants). The opening is configured to receive a discharge hose (a smaller hose could fit into the opening) and the container is adapted to hold down the discharge hose during draining. The container is hollow and

configured to be filled and emptied with a filling material for varying the weight of the hold down device. The container is a solid material of a sufficient weight for holding down the discharge hose during draining. The container is configured to vertically stack at least two containers (the containers could be stacked and secured by a cord of some type) for added weight to hold down the discharge hose and to be stored by wrapping the discharge hose around the container. The handle (26) is integral with the top portion of the container and configured to allow the discharge hose to wrap around the handle for storing the hold down device. The hose recess is also configured to have a rear wall and receive the discharge hose between the right, left, upper and rear walls. The recess has openings on the front (at 36) and rear (at 32) ends of the container and is configured to receive the hose between the walls and a ground surface the bottom of the container rests on.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kihm in view of 4,416,396 to Ward. Kihm discloses a fill hole on the top portion of the container for filling and emptying the container with a filling material, as well as a plug (44) removably coupled to the fill hole for retaining the fill material within the container.

Kihm fails to disclose feet coupled to the bottom portion of the container. Ward discloses a fuel dispensing container with a plurality of feet (13, 15, 17) for raising the container a desired distance above the support surface. It would have been obvious to one of ordinary skill in the art at the time of the present invention, to have provided feet at the bottom of the container taught by Kihm, as taught by Ward, for the purpose of providing a means to raise the container a desired distance above a support surface. The feet would be configured to rest over a splash ring coupled to a sewer fitting. The feet are not disclosed as circular in shape, but the shape is a matter of design preference that would have been obvious to one of ordinary skill in the art at the time of the present invention as an aesthetic choice.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 7,108,026 to Luca

U.S. Patent 3,250,434 to Cavill

U.S. Patent 5,588,459 to Ellis

U.S. Patent 4,602,599 to Glagola

The above patents disclose container type hose holding devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (571) 272-6819. The examiner can normally be reached on Monday-Friday from 8:00AM

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to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

/SMM/

Steven Marsh

November 9, 2007

/Kimberly T. Wood/

Kimberly Wood

Primary Examiner

TC 3600

**INFORMATION DISCLOSURE
CITATION**

(Use several sheets if necessary)

ATTY. DOCKET NO.
KOCH-10131

SERIAL NO.

APPLICANT
Kochanski, Jerome

FILING DATE

GROUP

U. S. PATENT DOCUMENTS

EXAMINER INITIAL	REF	DOCUMENT NUMBER	DATE	NAME	CLASS	SUB- CLASS	FILING DATE IF APPROPRIATE
/S.M./		3,572,622		Smith			
/S.M./		4,796,926		Rapsilver			
/S.M./		5,431,455		Seely			
/S.M./		4,228,978		Rand			
/S.M./		5,330,233		Kress			
/S.M./		5,311,909		Adcock			
/S.M./		5,000,405		Rybak, et al.			
/S.M./		6,554,233		Ungerecht			

FOREIGN PATENT DOCUMENTS

	REF	DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB- CLASS	TRANSLATION	
							YES	NO

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)

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EXAMINER

/Steven Marsh/

DATE CONSIDERED

11/13/2007

***EXAMINER:** Initial if citation considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.